

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS  
HEREBY AUTHORIZING THE CITY MANAGER OF THE CITY OF FRISCO, TEXAS  
TO EXECUTE AN AGREEMENT FOR THE CONSTRUCTION OHIO DRIVE AND  
WADE BOULEVARD AND RELATED INFRASTRUCTURE IMPROVEMENTS BY  
AND BETWEEN THE CITY OF FRISCO AND TTC LTD.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF  
FRISCO, TEXAS:

SECTION 1: The City Manager of the City of Frisco, Texas, is hereby  
authorized to execute, on behalf of the City Council of the City of Frisco, Texas, an  
Agreement for the Construction of Ohio Drive and Wade Boulevard and Related  
Infrastructure Improvements by and between the City of Frisco and TTC Ltd., a  
copy of which is attached hereto as Exhibit "A" and incorporated herein for all  
purposes.

SECTION 2: This Resolution shall take effect immediately upon its passage.

RESOLVED THIS the \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Kathleen A. Seei, Mayor

ATTEST TO:

\_\_\_\_\_  
Nan Parker  
City Secretary

**AFTER RECORDING, RETURN  
TO:**

City Manager  
City of Frisco, Texas  
6891 Main Street  
Frisco, Texas 75034

**Agreement for the Construction of Ohio Drive and Wade Boulevard  
and Related Infrastructure Improvements**

This Agreement for the Construction of Ohio Drive and Wade Boulevard and related infrastructure improvements (the "**Agreement**") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2001, by and between TTC, Inc. ("**TTC**") and the City of Frisco, Texas ("**Frisco**") on the terms and conditions hereinafter set forth.

WHEREAS, **TTC** desires to fulfill its obligations for thoroughfare impact fees on the **TTC Property** (as hereinafter defined) as set forth in this Agreement.

NOW, THEREFORE, in consideration of the conveyance of right-of-way by **TTC** and the covenants and conditions contained in this **Agreement**, **Frisco** and **TTC** agree as follows:

1. Land Subject to Agreement. The land that is subject to this **Agreement** is approximately 27.914 acres of land, more or less, located in the Z. Burrus Survey, Abstract No. 74, and more particularly described in *Exhibit "A"*, attached hereto and incorporated herein for all purposes (the "**TTC Property**"). **TTC** represents that it is the sole owner of the **TTC Property**.

2. Required Right-of-Way Dedication and Easements. Upon execution of this **Agreement**, **TTC** agrees to deliver to **Frisco** by special warranty deed and easements which are on the **TTC Property** for the construction of Wade Boulevard as depicted in *Exhibit "B"*, and described by metes and bounds on *Exhibit "C-1"*, attached hereto and incorporated for all purposes.

(a) Upon thirty (30) days' written notice by **Frisco**, **TTC** agrees to deliver to **Frisco** by special warranty deed all right-of-ways and easements which are on the **TTC Property** for the construction of Ohio Drive as depicted in *Exhibit "\_\_\_"* and described by metes and bounds on *Exhibit "C-2"*, attached hereto and incorporated for all purposes.

(b) In order to establish the proper alignment of Ohio Drive as shown on Exhibit "B", **TTC** shall convey to **Frisco** the property described in *Exhibit "C-3"*, and **Frisco** shall acquire from the adjacent property owner ("**Abutting Owner**") the right-of-way for Ohio Drive described in *Exhibit "E-1"* attached hereto and incorporated for all purposes. As part of the acquisition of the right-of-way described in *Exhibit "E-1"*, **Frisco** shall use its best efforts to obtain and deliver to **TTC** a special warranty deed from the **Abutting Owner** conveying to **TTC** the property

described in *Exhibit "E-2"* attached hereto and made a part hereof, in exchange for a special warranty deed from **TTC** conveying to the **Abutting Owner** the property described in *Exhibit "C-4"*, attached hereto and made a part hereof.

(c) **Frisco** shall hold the special warranty deed for the property described in *Exhibit "C-4"* until the conveyance is made in accordance with the provisions of subsection (c) and return to **TTC** the special warranty deed for the property described in *Exhibit "C-4"* if the **Abutting Owner** does not agree to the property exchange.

3. Construction of Streets.

(a) In the event the **TTC Property** is being developed prior to the construction of either Wade Boulevard or Ohio Drive, **TTC** will provide for the design, engineering and construction of the roadways, storm sewers, water and sanitary sewer lines listed below in accordance with applicable **Frisco** standards, rules and regulations:

(i) a two (2) lane section of Ohio Drive and related storm sewer lines as generally depicted in *Exhibit "C"* : and

(ii) a two (2) lane section of Wade Boulevard and related storm sewer lines as generally depicted in *Exhibit "D"*.

(b) In the event **TTC** constructs Wade Boulevard and/or Ohio Drive, **Frisco** agrees 1) the construction costs of Wade Boulevard as approved by the City Engineer will be available for credit for thoroughfare impact fees due on the **TTC Property** in an amount not to exceed the thoroughfare impact fees due on the **TTC Property** and 2) the construction costs of Ohio Drive described above as approved by the City Engineer will be reimbursed to **TTC** at a time **Frisco** has on hand thoroughfare impact fees and/or bond funds available for road improvements in an amount sufficient to reimburse **TTC** for the construction costs of Ohio Drive.

(c) In the event, the **TTC Property** is not being developed prior to the construction of both Wade Boulevard or Ohio Drive, **Frisco** will provide for the design, engineering and construction of the roadways and storm sewer lines listed below in accordance with applicable **Frisco** standards, rules and regulations:

(i) a two (2) lane section of Ohio Drive and related storm sewer lines as generally depicted in *Exhibit "C"*: and

(ii) a two (2) lane section of Wade Boulevard and related storm sewer lines as generally depicted in *Exhibit "D"*.

(d) **Frisco** will begin the physical construction of Ohio Drive within 365 days from the date that **Frisco** requests and receives right-of-way deeds for Ohio Drive from **TTC** and right-of-way deeds for Hillcrest Road, the Wade Boulevard intersection and Ohio Drive from **Creekwood Hillcrest, L.P.**

(e) Within ten (10) business days of written demand of **Frisco**, **TTC** shall dedicate any temporary drainage easements as determined by **Frisco**, reasonably necessary for the construction of streets subject to this **Agreement**. All such requests for easements shall be directly related to the construction of the streets subject to this **Agreement**.

4. Impact Fees. This **Agreement** shall only apply to thoroughfare impact fees. The **TTC Property** shall be subject to the thoroughfare impact fee schedule in effect at the time of development; provided, however, thoroughfare impact fees shall not exceed TWELVE THOUSAND AND NO/100 DOLLARS (\$12,000.00) per acre.

5. Default. In the event any party fails to comply with the terms of this **Agreement**, the other party has the right to enforce the terms of this **Agreement** by specific performance or by any other remedy available to it at law or in equity.

6. Notice. Any notice to be given or to be served upon a party hereto in connection with this **Agreement** must be in writing and may be given by certified or registered mail and shall be deemed to have been given and received when a certified or registered letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail, and if given otherwise than by certified or registered mail, it shall be deemed to have been given and delivered to and received by the party (or such party's agent or representative) to whom it is addressed. Such notice shall be given to the parties hereto at the address set forth below. Any party hereto may, at any time by giving two (2) days written notice to the other parties, designate any other address in substitution of the foregoing address to which such notice shall be given.

*If Notice to **TTC**:*

*Shula Netzer  
16950 Dallas Parkway, Suite 120  
Dallas, Texas 75248*

*If Notice to **Frisco**:*

George Purefoy, City Manager  
City of Frisco  
6891 Main Street  
Frisco, Texas 75034

7. Venue. This **Agreement** shall be construed under and in accordance with the laws of the State of Texas and is specifically performable in Collin County, Texas. Exclusive venue shall be in Collin County, Texas.

8. Severability. In case any one or more provisions contained in this **Agreement** shall be for any reason held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not effect any other provision hereof, and it is the intention of the parties to this **Agreement** that in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision be added to this **Agreement** which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

9. No Waiver of Governmental Immunity. Nothing contained in this **Agreement** shall be construed as a waiver by **Frisco** of its governmental immunity, except as the same may relate to the obligations of these parties as provided herein.

10. Authority. Each of the parties represent and warrant to the other that they have the full power and authority to enter into and fulfill the obligations of this **Agreement**.

11. Miscellaneous.

(a) Before this **Agreement** may be assigned, the following conditions must be satisfied:

(i) **TTC** must provide written notice to **Frisco** of the assignment; the assignment of the **Agreement** must be evidenced by a recordable document. The recordable document referred to in this paragraph is subject to the reasonable approval of **Frisco** which shall be deemed approved if not disapproved by **Frisco** on or before twenty one (21) days after **TTC** submits its recordable assignment to **Frisco**.

(ii) At the time of any assignment, **TTC** must give the assignee written notice that any and all obligations, covenants and/or conditions contained in the **Agreement** will be assumed solely and completely by the assignee. The notice provided pursuant to this paragraph is subject to the reasonable approval of **Frisco**; which shall be deemed approved if not disapproved by **Frisco** on or before twenty one (21) days after **TTC** submits its recordable assignment to **Frisco** and **TTC** will file any approved, executed assignment in the Land Records of Collin County, Texas.

(b) All right-of-way conveyances shall be by Special Warranty Deed in a form reasonably acceptable to **Frisco** and will be free and clear of all liens and encumbrances. **Frisco** or its designated representative will prepare at its cost all

documents necessary for all conveyances contemplated by Paragraph 2 of this **Agreement**.

(c) All construction will be in accordance with applicable ordinances and regulations of **Frisco**.

(d) The parties hereto acknowledge this **Agreement** is limited to the obligations created by the **Impact Fee Ordinance** for thoroughfares only. **Frisco** Ordinances covering impact fees for water and sewer, property taxes, park dedication and/or payment in lieu of dedication of land, utility rates and the like are not affected by this **Agreement**. Further, this **Agreement** does not waive or limit the obligations of **TTC** to **Frisco** under any other Ordinance, whether now existing or in the future arising.

(e) This **Agreement** contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties to this **Agreement**.

(f) This **Agreement** shall be deemed drafted equally by all parties hereto. The language of all parts of this **Agreement** shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.

(g) Time is of the essence in this **Agreement**.

**\*\* REMAINDER OF PAGE INTENTIONALLY LEFT BLANK \*\***

**EXECUTED** as of the date first above written.

**CITY OF FRISCO, TEXAS**

\_\_\_\_\_  
Kathleen A. Seei, Mayor

**ATTEST:**

\_\_\_\_\_  
Nan Parker, City Secretary

**TTC, INC.**

\_\_\_\_\_  
TTC, Inc.

STATE OF TEXAS            )  
  )  
COUNTY OF COLLIN        )

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledges to me he/she is the duly authorized representative for the **CITY OF FRISCO** and he/she executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My Commission Expires:  
  
\_\_\_\_\_

STATE OF TEXAS            )  
  )  
COUNTY OF COLLIN        )

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he/she acknowledges to me he/she is the duly authorized representative for **TTC, INC.** and he/she executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My Commission Expires:

\_\_\_\_\_